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9 **BEFORE THE**
PHYSICAL THERAPY BOARD OF CALIFORNIA
10 **DEPARTMENT OF CONSUMER AFFAIRS**
11 **STATE OF CALIFORNIA**

12 In the Matter of the Accusation Against:

Case No. 1D 2006 64807

13 PAUL WARREN FRANKLIN, P.T.A.

14 16343 Valley Ranch Road
15 Canyon Country, CA 91387

A C C U S A T I O N

16 Physical Therapist Assistant License No. AT
17 4340

Respondent.

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20 Complainant alleges:

21 **PARTIES**

22 1. Steven K. Hartzell (Complainant) brings this Accusation solely in his
23 official capacity as the Executive Officer of the Physical Therapy Board of California (Board),
24 Department of Consumer Affairs.

25 2. On or about April 25, 1996, the Board issued Physical Therapist Assistant
26 License Number AT 4340 to Paul W. Franklin, P.T.A. (Respondent). This license was in full
27 force and effect at all times relevant to the charges brought herein and will expire on April 30,
28 2008, unless renewed.

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3. This Accusation is brought before the Physical Therapy Board of

“The board shall issue, suspend, and revoke licenses and approvals to practice
l therapy as provided in this chapter.”

“The board may, after the conduct of appropriate proceedings under the Administrative Procedure Act, suspend for not more than 12 months, or revoke, or impose probationary conditions upon any license, certificate, or approval issued under this chapter for unprofessional conduct that includes, but is not limited to, one or any combination of the following causes:

“(d) Conviction of a crime which substantially relates to the qualifications, ns, or duties of a physical therapist or physical therapy assistant. The record o
ion or a certified copy thereof shall be conclusive evidence of that conviction.

“(i) Conviction of a violation of any of the provisions of this chapter or of the Medical Practice Act, or violating, or attempting to violate, directly or indirectly, or aiding in or abetting the violating of, or conspiring to violate any provision or term of this chapter or of the State Medical Practice Act.”

“A plea or verdict of guilty or a conviction following a plea of nolo contendere to a charge of a felony or of any offense which substantially relates to the qualifications, functions, or duties of a physical therapist is deemed to be a conviction for the meaning of this article. The board may order the license suspended or annulled, or may decline to issue a license, when the time for appeal has elapsed, or the

1 judgement of conviction has been affirmed on appeal or when an order granting probation
2 is made suspending the imposition of sentence, irrespective of a subsequent order under
3 Section 1203.4 of the Penal Code allowing that person to withdraw his or her plea of
4 guilty and to enter a plea of not guilty, or setting aside the verdict of guilty, or dismissing
5 the accusation, information, or indictment.”

6 7. California Code of Regulations, Title 16, section 1399.20, states:

7 “For the purposes of denial, suspension or revocation of a license or approval,
8 pursuant to Division 1.5 (commencing with Section 475) of the code, a crime or act shall
9 be considered to be substantially related to the qualifications, functions or duties of a
10 person holding a license or approval under the Physical Therapy Practice Act if to a
11 substantial degree it evidences present or potential unfitness of a person to perform the
12 functions authorized by the license or approval in a manner consistent with the public
13 health, safety or welfare. Such crimes or acts shall include but not be limited to the
14 following:

15 “(a) Violating or attempting to violate, directly or indirectly, or assisting in or
16 abetting the violation of, or conspiring to violate any provision or term of the Physical
17 Therapy Practice Act.

18 “(b) Conviction of a crime involving fiscal dishonesty arising out of or in
19 connection with the practice of physical therapy.

20 “(c) Violating or attempting to violate any provision or term of the Medical
21 Practice Act.”

22 8. Section 2239 of the Code states:

23 “(a) The use or prescribing for or administering to himself or herself, of any
24 controlled substance; or the use of any of the dangerous drugs specified in Section 4022,
25 or of alcoholic beverages, to the extent, or in such a manner as to be dangerous or
26 injurious to the licensee, or to any other person or to the public, or to the extent that such
27 use impairs the ability of the licensee to practice medicine safely or more than one
28 misdemeanor or any felony involving the use, consumption, or self-administration of any

1 of the substances referred to in this section, or any combination thereof, constitutes
2 unprofessional conduct. The record of the conviction is conclusive evidence of such
3 unprofessional conduct.”

4 9. Section 2661.5 of the Code states:

5 “(a) In any order issued in resolution of a disciplinary proceeding before
6 the board, the board may request the administrative law judge to direct any licensee found
7 guilty of unprofessional conduct to pay to the board a sum not to exceed the actual and
8 reasonable costs of the investigation and prosecution of the case.

9 “(b) The costs to be assessed shall be fixed by the administrative law judge
10 and shall not in any event be increased by the board. When the board does not adopt a
11 proposed decision and remands the case to an administrative law judge, the
12 administrative law judge shall not increase the amount of the assessed costs specified in
13 the proposed decision.

14 “(c) When the payment directed in an order for payment of costs is not
15 made by the licensee, the board may enforce the order of payment by bringing an action
16 in any appropriate court. This right of enforcement shall be in addition to any other rights
17 the board may have as to any licensee directed to pay costs.

18 “(d) In any judicial action for the recovery of costs, proof of the board's
19 decision shall be conclusive proof of the validity of the order of payment and the terms
20 for payment.

21 “(e)(1) Except as provided in paragraph (2), the board shall not renew or
22 reinstate the license or approval of any person who has failed to pay all of the costs
23 ordered under this section.

24 “(2) Notwithstanding paragraph (1), the board may, in its discretion,
25 conditionally renew or reinstate for a maximum of one year the license or approval of any
26 person who demonstrates financial hardship and who enters into a formal agreement with
27 the board to reimburse the board within that one year period for those unpaid costs.

28 “(f) All costs recovered under this section shall be deposited in the

1 Physical Therapy Fund as a reimbursement in either the fiscal year in which the costs are
2 actually recovered or the previous fiscal year, as the board may direct.

3 **VEHICLE CODE**

4 10. Section 23152, subdivision (b), of the Vehicle Code states, in pertinent
5 part:

6 “(b) It is unlawful for any person who has 0.08 percent or more, by weight, of
7 alcohol in his or her blood to drive a vehicle.

8 “For purposes of this article and Section 34501.16, percent, by weight, of alcohol
9 in a person's blood is based upon grams of alcohol per 100 milliliters of blood or grams of
10 alcohol per 210 liters of breath.

11 “In any prosecution under this subdivision, it is a rebuttable presumption that the
12 person had 0.08 percent or more, by weight, of alcohol in his or her blood at the time of
13 driving the vehicle if the person had 0.08 percent or more, by weight, of alcohol in his or
14 her blood at the time of the performance of a chemical test within three hours after the
15 driving.”

16 **FIRST CAUSE FOR DISCIPLINE**

17 **(Criminal Conviction)**

18 11. Respondent is subject to discipline under sections 2660, subdivision (d),
19 and 2661 of the Code, in conjunction with California Code of Regulations Title 16, section
20 1399.20 in that he was convicted of a misdemeanor offense of driving with a blood alcohol count
21 of .08 or greater, which is substantially related to the qualifications, functions, or duties of a
22 physical therapist assistant. The facts and circumstances are as follows:

23 12. On or about April 16, 2006, Respondent was involved in a vehicle
24 collision. Respondent lost control of his vehicle, collided into a concrete bridge rail and caused
25 another collision with a vehicle coming onto the freeway on-ramp. Respondent suffered injuries
26 and an ambulance was called.

27 13. Upon arrival, police officers smelled the strong odor of alcoholic beverage
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1 emitting from Respondent and observed his eyes to be red and watery. Respondent admitted he
2 drank two Budweisers earlier that morning and his speech was noted to be slow and slurred.
3 Because of Respondent's inability to perform the field sobriety tests, Respondent was placed
4 under arrest for driving under the influence of alcohol.

5 14. A blood alcohol test was administered and Respondent was found to have
6 a blood alcohol content of .27 percent. Due to Respondent's injuries, Respondent was cited with
7 a notice to appear for violation of driving under the influence and released to the care of Valley
8 Presbyterian Hospital.

9 15. On or about May 8, 2006, a misdemeanor complaint was filed charging
10 Respondent with one count of violating Vehicle Code section 23152, subdivision (a), a
11 misdemeanor driving under the influence of alcohol or drugs, and one count of violating Vehicle
12 Code section 23152, subdivision (b), a misdemeanor, driving with a blood alcohol count of .08 or
13 greater, in the case entitled *The People of the State of California v. Paul Warren Franklin*, Los
14 Angeles County Superior Court Case No. 6VY02183.

15 16. On or about June 19, 2006, Respondent was found guilty of one count of
16 violating Vehicle Code section 23152, subdivision (b). All other charges were dismissed.

17 17. On or about June 19, 2006, the Court entered judgment and ordered the
18 imposition of sentence suspended. Respondent was placed on three (3) years summary probation
19 under the following terms and conditions:

- 20 a. Pay a restitution fine in the amount of \$1,536.00;
- 21 b. Perform 300 hours of community service;
- 22 c. Enroll in a nine (9) month alcohol program;
- 23 d. Attend twenty-six (26) Alcoholics Anonymous meetings at the rate
24 of one (1) times per week, in addition to those required as part of the alcohol education
25 program;
- 26 e. Refrain from operating a motor vehicle with any measurable
27 amount of alcohol in the blood system; and
- 28 f. Obey all laws and orders of the court.

1 18. Respondent's conviction for driving a vehicle with 0.08 percent or more,
2 by weight, of alcohol in his blood is substantially related to the qualifications, functions and
3 duties of a physical therapist assistant. It reflects a lack of sound professional and personal
4 judgment that is relevant to a physical therapist assistant's fitness and competence to practice
5 physical therapy. In this regard, alcohol consumption quickly affects normal driving ability, and
6 driving under the influence of alcohol threatens personal safety and places the safety of the public
7 in jeopardy. It further shows a disregard of medical knowledge concerning the effects of alcohol
8 on vision, reaction time, motor skills, judgment, coordination and memory, and the ability to
9 judge speed, dimensions and distance. The conviction also demonstrates an inability or
10 unwillingness of Respondent to obey the legal prohibition against drinking and driving and
11 constitutes a serious breach of a duty owed to society. A conviction involving alcohol use
12 reflects poorly on Respondent's common sense and professional judgment, which are essential to
13 the practice of physical therapy, and tend to undermine public confidence in and respect for the
14 profession.

15 **SECOND CAUSE FOR DISCIPLINE**

16 **(Use of Alcohol in a Dangerous Manner)**

17 19. Respondent is subject to discipline under section 2660, subdivision (i), and
18 2239 of the Code in that he used alcoholic beverages to the extent, or in such a manner, as to be
19 dangerous or injurious to himself and/or to the public. The circumstances are as follows:

20 20. The facts and circumstances alleged in paragraphs 12 through 17 above are
21 incorporated here as if fully set forth.

22 **PRAYER**

23 WHEREFORE, Complainant requests that a hearing be held on the matters herein
24 alleged, and that following the hearing, the Physical Therapy Board issue a decision:

25 1. Revoking or suspending Physical Therapist Assistant License Number AT
26 4340, issued to Paul W. Franklin, P.T.A.;

27 2. Ordering Paul W. Franklin, P.T.A. to pay the Physical Therapy Board the
28 reasonable costs of the investigation and enforcement of this case, pursuant to Business and

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Professions Code section 2661.5;

3. Taking such other and further action as deemed necessary and proper.

DATED: February 13, 2007

Original Signed By: _____
STEVEN K. HARTZELL
Executive Officer
Physical Therapy Board of California
State of California
Complainant

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